

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
	)	
Petition of USTelecom for Forbearance	)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to Accelerate	)	
Investment in Broadband and Next-	)	
Generation Networks	)	

**COMMENTS IN SUPPORT OF MOTION FOR SUMMARY DENIAL**

Socket Telecom, LLC (“Socket”) hereby supports the Motion for Summary Denial (“Motion”) filed on August 6, 2018, by INCOMPAS, FISPA, the Midwest Association of Competitive Communications (“MACC”), and the Northwest Telecommunications Association (collectively, the “Competitive Carriers Group”) to deny summarily the Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) with respect to the unbundling and resale mandates in Section 251(c)(3) and (4) and associated obligations under Sections 251 and 252 (“Category 1”), and to the time interval requirements for nondiscriminatory treatment of affiliates and non-affiliates under Section 272(e)(1) (“Category 2”) in the above-referenced proceeding<sup>1</sup>. As discussed in the Competitive Carriers Group’s Motion, on its face, the Petition does not meet the burden of proof for granting the petition based on the standard established for forbearance relief.

Socket is a privately held competitive local exchange carrier and broadband service provider providing residential and business telecommunications and broadband services

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<sup>1</sup> Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018) (“Petition”).

primarily in Missouri. In competing with incumbent local exchange carriers, Socket relies upon its own fiber network, unbundled network elements (“UNEs”) including dark fiber, DS1 loops and Extended Enhanced Loops, DS3 loops, copper loops and subloops, access to 911 and E911 databases, and access to operations support systems (“OSS”) and, to a lesser extent, avoided-cost resale.

### **Standard for Granting Forbearance**

In granting forbearance, the FCC can only forbear from any statutory provision or regulation if it determines that: (1) enforcement of the regulation is not necessary to ensure that the telecommunications carrier’s charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>2</sup> In making such determinations, the Commission also must consider pursuant to section 10(b) “whether forbearance from enforcing the provision or regulation will promote competitive market conditions.”<sup>3</sup>

The Commission can only consider granting forbearance if the Petition requesting it includes all “facts, information, data and arguments on which [it] intends to rely.”<sup>4</sup> As the Commission previously found, only with “sufficient evidence and persuasive arguments” can the Commission “make an informed and reasoned determination that the statutory criteria are met.”<sup>5</sup> USTelecom’s Petition fails to meet the procedural standards necessary to even be considered, and completely lacks any factual basis to support an informed and reasoned analysis.

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<sup>2</sup> 47 U.S.C. § 160(a).

<sup>3</sup> 47 U.S.C. § 160(b).

<sup>4</sup> *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, 24 FCC Rcd. 9556, ¶ 21 (2009) (“*Forbearance Procedures Order*”)17,21.

<sup>5</sup> *Id.* ¶ 21.

## Reasons for Summarily Denying USTelecom's Petition

Consistent with the Competitive Carriers Group's Motion, Socket believes USTelecom's Petition must be summarily denied because it is incomplete, procedurally deficient, overly broad, materially unsound, and unsupported by any factual support or analysis. First, it violates the Commission's "complete-as-filed" rule. The "complete-as-filed" rule requires a petition for forbearance to include enough detail and clarity that interested parties are not presented with "unfolding arguments and evidence," which would "unreasonably burden [] the resources of stakeholders."<sup>6</sup> USTelecom's Petition is a moving target with unfolding terms and arguments. After being filed on May 21, 2018, the terms of the Petition were substantially modified on June 21, 2018<sup>7</sup>. This left stakeholders scrambling to change their analysis and comments to address the terms of the newly filed modified and unfolding Petition. As described below, USTelecom's Petition provides no supporting data, is overly broad, and incomplete. For these reasons, USTelecom's Petition fails entirely to meet the "complete-as filed" standard and cannot be seriously considered without additional "unfolding arguments and evidence."<sup>8</sup>

In addition to being procedurally deficient by not being complete, it is materially unsound, even when viewed in the best light. Summary denial is appropriate where "the petition for forbearance, viewed in the light most favorable to the petition, cannot meet the statutory criteria for forbearance."<sup>9</sup> USTelecom's Petition is completely inconsistent with the standards set forth in the *Qwest Phoenix Forbearance Order* which required a separate examination of product markets and geographic markets with differing competitive conditions, when analyzing

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<sup>6</sup> *Id.* ¶ 12.

<sup>7</sup> *Ex Parte* Notice of USTelecom, UNE Forbearance Revised Transition Proposal, June 21, 2018.

<sup>8</sup> *Petition*, pg. 2

<sup>9</sup> 47 C.F.R. § 1.56(a).

whether Section 251(c)'s local competition provisions remain necessary and in the public interest<sup>10</sup>.

USTelecom's Petition requests forbearance from supplying all UNEs, in all product markets, and in all geographic markets. In doing so, the Petition provides no analysis of the product markets the various UNEs are used for and no analysis of the impact granting the petition would have on any specific products and services. It also fails to address the impact that eliminating UNEs and avoided-cost resale would have on separate retail markets. For example, it simply dismisses the impact eliminating UNEs would have on the residential marketplace by simply claiming that in "the residential marketplace . . . there is effectively no remaining UNE-based competition."<sup>11</sup> As Socket's own experience shows, this is simply untrue. The impact on the residential marketplace cannot just summarily be dismissed with no factual evidence or analysis.

USTelecom's Petition does not even address all UNEs, failing to provide any discussion of dark fiber, access to 911 and E911 databases, and operations support systems.<sup>12</sup> USTelecom's Petition provides absolutely no mention of the competitive impact of eliminating avoided-cost discount resale. It also provides no analysis of any separate geographic markets, treating the most-dense urban markets the same as markets in rural Missouri. It is simply a blanket request from all unbundling and resale obligations, even those items and obligations it does not address, across all markets and across all geographic areas; none of which are supported by any details, facts, or analysis.

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<sup>10</sup> See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, 25 FCC Rcd. 8622 (2010) ("*Qwest Phoenix Forbearance Order*").

<sup>11</sup> See Petition at 27.

<sup>12</sup> See Petition at 27.

## **Conclusion**

The consequences of granting this Petition would be tremendously detrimental to both to business and residential consumers, as well as to competitive carriers that rely upon UNEs and avoided-cost resale as a necessary input to be competitive and a bridge to constructing their own broadband networks. A decision of such importance cannot begin to be considered based upon such an incomplete and overly broad petition with no detailed analysis or factual support.

USTelecom's Petition is simply incomplete and inconsistent with any standard previously set by the Commission; even when viewed in the light most favorable to it. The Commission should, therefore, summarily deny the Petition pursuant to 47 U.S.C. § 160(c).

Respectfully Submitted,

/s/ R. Matthew Kohly

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